

AUTHORITY TO IMPOSE SMALL FINES

JUNE 8, 1961.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 1668]

The Committee on Commerce, to whom was referred the bill (S. 1668) to authorize the imposition of forfeitures for certain violations of the rules and regulations of the Federal Communications Commission in the common carrier and safety and special fields, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of this bill is to add a new section to the Communications Act of 1934, as amended, so as to grant authority to the Federal Communications Commission to impose monetary forfeitures for violations of the Commission's rules and regulations in the common carrier and safety and special fields.

The bill would also provide for the remission or mitigation by the Commission of such forfeitures if the circumstances warranted.

GENERAL STATEMENT

This bill was introduced by the chairman of your committee at the request of the Federal Communications Commission. Full and complete hearings were held by the Subcommittee on Communications on a similar bill in the 86th Congress at which time all interested parties were afforded an opportunity to present their views. The bill passed the Senate in the 86th Congress but the House did not take action.

The bill would amend title 5 of the Communications Act of 1934 by adding a new section, section 510. Under this proposal the Federal Communications Commission would be given authority to impose forfeitures for violation of the Commission's rules and regulations by radio stations operating in the common carrier and safety and

special radio fields. It would also amend section 504(b) of the Communications Act by extending the Commission's authority to remit or mitigate forfeitures imposed under section 508.

Similar type of forfeiture authority has been given to various Government agencies such as the broad provision for civil penalties for violations of the Civil Aeronautics Act and certain regulations issued under that act (49 U.S.C. 62). And see also 8, U.S.C. 1321 et seq. (aliens and nationality); 46, U.S.C. 526 (a) and (p) (motor-boats); 49 U.S.C. 181(b) (aircraft); 49 U.S.C. 322(h) (motor carriers); and 49 U.S.C. 621 (inland waterways and air carriers).

This bill would provide the Commission with a much-needed additional tool for coping with serious problems of enforcement which have arisen in the past decade in the common carrier and safety and special fields. Such problems stem principally from the tremendous expansion since World War II in the number of licensed stations operated in the nonbroadcast radio services, a growth due not only to the development of new equipment but also to the increased utilization of new portions of the radio spectrum. The Commission has authorized numerous small companies to operate radio stations as specialized common carriers. And there has been an even greater expansion in the licensing of radio for diverse safety and special purposes (e.g., for use by maritime and aviation interests, police and fire departments, utilities companies, forestry agencies, and transportation companies). As an indication of this growth, by September 30, 1958, the number of radio stations (as computed on the basis of assigned call letters) licensed in the safety and special radio field alone had risen to 457,124, which represents an increase of several hundred percent over stations in those services as of June 30, 1946. Similarly, with respect to small boats equipped for radiotelephonic communications, there has been an increase of approximately 400 percent for the period from 1949 to 1959.

One of the most serious enforcement problems confronting the Commission results from the chaotic conditions existing on the small boat radiotelephone frequencies between 2 and 3 megacycles. In areas where there are concentrations of these boats, the misuse of the distress frequency has prevented the transmission of emergency messages to the Coast Guard. Normal enforcement methods such as issuances of rule violation notices and suspension of operator licenses have only been partially successful. During the first quarter of the fiscal year 1959, a total of 558 small boat radio stations were inspected. There were 371 violation notices issued as the result of noncompliance with the Commission's regulations. In addition, 159, or 28 percent, were found to be operating without authority from the Commission. Since inspection of 558 vessels is a very limited sampling of 70,000 boats licensed by the Commission, it is evident that disregard for the Commission's regulations is widespread. These statistics emphasize the inadequacy of the Commission's available enforcement tools in coping with this situation.

While the growth in the number of such stations is definitely in the public interest and consistent with the congressional mandates expressed in sections 1 and 303(g) of the Communications Act (47 U.S.C. 151, 303(g)), respectively—which require, among other things, the promotion of safety of life and property through radio communications, and the encouragement of new uses of radio—one result of this

expanded use of radio has been a marked increase in recent years in the number of violations of the Commission's technical rules and regulations. In many instances, and particularly in the newer private nonbroadcast services, radio is used only as an adjunct to the principal business of the licensee. Hence, licensees of such stations do not have the same sensitive appreciation for the necessity of adhering to the Commission's technical rules as do licensees in the broadcast services. Standing alone the violations involved are comparatively minor in nature, but collectively their number and variety represent not only a serious menace to that orderly use of the spectrum so necessary to efficient regulation by the Commission but they also constitute a serious menace to life and property in those services where radio serves vital safety purposes.

Experience has shown that existing enforcement sanctions in the Communications Act are inadequate for handling these problems. Those sanctions, such as criminal penalties or license revocation proceedings, are normally too drastic, considering the minor nature of the violations involved. What is more, resort to them is too cumbersome and time consuming, in light of the multitude of violations that occur. And while these sanctions are available for aggravated violations, the FCC is reluctant in any event to take action which would deprive a licensee of radio when it is necessary for safety purposes, such as on aircraft or aboard ship.

The purpose of this legislation, therefore, is to provide the Commission with additional statutory authority for enforcing compliance with its rules and regulations, which authority is designed to meet the special problems of enforcement arising out of the use of radio by stations operating in the nonbroadcast services.

EXPLANATION OF THE BILL BY SECTION

Section 1

This section would amend title V of the Communications Act by adding at the end thereof a new section, section 510.

Subsection (a).—This subsection of new section 510 separately lists in 12 subparagraphs those violations of the Commission's technical rules and regulations occurring most commonly in the nonbroadcast fields. It would provide that where any radio station (other than a licensed station in the broadcast service or stations governed by pts. II and III of title III or sec. 507 of the Communications Act) commits any one of these specified violations, the person operating such station and the licensee thereof shall, in addition to any other penalty prescribed by law, each forfeit \$100 to the United States.

While subsection (a) would provide that the violation of each paragraph shall constitute a separate offense, it places limitations in two respects on the maximum forfeiture liability which could be imposed under section 510, when such violations occur within a specified period of time. First, where there is more than one violation of the same paragraph, subsection (a) contains a proviso placing a maximum forfeiture liability of \$100 for which any person shall be liable, irrespective of the number of violations of such single paragraph, when such violations thereof occur within 90 days prior to the date the notice of apparent liability provided for in subsection 510(c) is issued or sent to the violator. As to persons committing more than one offense (i.e., those violating the terms of more than one paragraph), a further

proviso in section 510(a) sets a \$500 maximum forfeiture liability for which any person shall be liable for all violations, irrespective of their total number, when such multiple violations occur within 90 days of the date the notice of apparent liability provided for in subsection (c) is issued or sent to the violator.

It was felt that once total forfeitures exceeded these limits, it would be more appropriate for the Commission to resort to the formal procedures required by the administrative sanctions contained elsewhere in the Communications Act.

Finally, with respect to subsection (a) of section 1, your committee wishes to point out that the forfeitures provided for herein are "in addition to any other penalty prescribed by law." Hence, the fact that the Commission might have assessed a forfeiture for one or more of the violations specified in section 510(a) would not preclude the Commission from taking appropriate action when the circumstances so warranted, such as license revocation or recommending criminal prosecution.

Subsection (b).—Subsection (b) of section 1 would provide that the forfeiture liability provided for in subsection (a) shall attach only for a willful, or negligent, or repeated violation by any person of the provisions of subsection (a).

Subsection (c).—This final subsection of section 1 has a twofold purpose. First, it sets forth a condition under which forfeiture liability shall not attach. Secondly, it sets forth the rights of persons against whom liability might be imposed, and the procedures to be followed by such persons on receiving a notice of apparent liability.

Subsection (c) would first provide that no forfeiture liability shall attach under section 510 after a lapse of 90 days from the date of the violation, unless within such 90-day period a written notice of apparent liability, which must set forth the facts on which alleged liability is based, shall have been issued by the Commission and received by such person, or unless the Commission has within such period sent such person a notice of apparent liability by registered or certified mail at his last known address. The purpose of this first part of subsection (c) is to require the Commission to act within 90 days of an alleged violation (thus in effect imposing for purposes of forfeiture liability a 90-day statute of limitations for such violations) by the issuance of an appropriate written notice of apparent liability. This provision incorporates those concepts of due notice, in prescribed form, which your committee considers a fundamental and indispensable part of procedural due process.

The final portion of subsection (c) would then provide that after a person has been notified of his apparent liability, he shall have an opportunity to show cause, in writing, why he should not be held liable. And upon request he shall also be afforded an opportunity for a personal interview with an official of the Commission at the field office of the Commission nearest to the person's place of residence. This final portion of subsection (c) is concerned with the rights of any person receiving a notice of apparent liability from the Commission. The procedural safeguards afforded such a person permit him to show cause, in writing, as to why he should not be held liable to a forfeiture. Further, this final portion contemplates that such person shall, if he desires, also have the opportunity to discuss his case with a representative of the Commission, at the field office of the Commission

nearest that person's place of residence, to show further why he should not be held liable. Thus, the hearing contemplated by subsection (c) is an informal one. The informal proceedings called for are necessary to permit expeditious handling of violations, the prevention of which your committee considers vital to efficient use of the radio spectrum by the stations which would be covered by this legislation. Thus, what is required is for the Commission to afford a fair opportunity to a person against whom a notice of apparent liability has been issued to demonstrate in writing, or orally through informal discussion, all those facts and circumstances which he believes justified his conduct.

Section 2

Section 2 would amend section 504(b) of the Communications Act, which relates to the Commission's authority to remit or mitigate forfeitures. As amended, section 504(b) would provide (amended language italicized):

(b) The forfeitures imposed by parts II and III of title III and section 507, and *section 510* of this Act shall be subject to remission or mitigation by the Commission, upon application therefor, under such regulations and methods of ascertaining the facts as may seem to it advisable, and, if suit has been instituted, the Attorney General, upon request of the Commission, shall direct the discontinuance of any prosecution to recover such forfeitures: *Provided, however,* That no forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

Your committee recognizes that even though a forfeiture may have been imposed under section 510, subsequent facts and circumstances may justify either total or partial relief from the terms of any order of forfeiture. It is for this reason that your committee considers it only fair that the remission and mitigation procedures presently contained in section 504(b) of the Communications Act should be extended to section 510. Thus, under the amended language of section 504(b), a person against whom a forfeiture had been imposed under section 510 could apply to the Commission for relief from the terms of such forfeiture. Under such procedural regulations and factfinding procedures which the Commission deemed advisable, he could then demonstrate to the Commission why his forfeiture should be remitted or mitigated. Thus, he would be free to present evidence of those facts and circumstances which he believed justified rescission or modification of the terms of an order of forfeiture, subject only to the condition specified in section 504(b); i.e., that the Commission could not remit or mitigate any forfeiture which had already been determined by a court of competent jurisdiction.

Section 3

This final section of S. 1668 would provide that section 510 shall take effect on the 30th day after its enactment.

AGENCY COMMENTS

An explanation by the Federal Communications Commission of the proposed amendment to title V of the Communications Act of 1934, as amended, and the letter of the Comptroller General of the United States follow:

EXPLANATION OF PROPOSED AMENDMENT TO TITLE V OF
COMMUNICATIONS ACT OF 1934, AS AMENDED

(To authorize the Federal Communications Commission to impose forfeitures in cases of violation of certain rules and regulations by radio stations in the nonbroadcast services)

The attached legislative proposal amends title V of the Communications Act of 1934, as amended, by adding at the end thereof a new section, section 510. Its purpose is to grant to the Federal Communications Commission authority to impose monetary forfeitures for violations of certain of its rules and regulations relating to radio stations in the common carrier and safety and special fields. This proposal also provides for remission or mitigation by the Commission of such forfeitures by an appropriate amendment to section 504(b) of the Communications Act (47 U.S.C. 504(b)). The same proposal was passed by the Senate, as S. 1737, 86th Congress, on August 21, 1959.

The need for this legislation is emphasized by the rapid and phenomenal expansion in the nonbroadcast radio service since World War II due in large measure to the development of new equipment and the utilization of new portions of the frequency spectrum. Many small companies have been licensed to operate radio stations as specialized common carriers; a still greater expansion has taken place in what are known as the safety and special radio services where radio is employed for numerous diverse purposes by large groups of users such as the maritime and aviation interests, police and fire departments, electric and gas companies, forestry agencies, taxicab companies, highway, truck, and bus companies, etc.

As of September 30, 1960, the number of radio stations (computed on the basis of call letters assigned) in the safety and special radio services alone, had risen to 679,188. This represents an increase of several hundred percent over the stations which had been authorized in these services as of June 30, 1946.

In the number of small boats equipped for radiotelephone communications, there has been an increase of approximately 500 percent (from 18,140 to 93,561) for the period 1949-60. One of the most serious enforcement problems confronting the Commission results from the chaotic conditions existing on the small boat radiotelephone frequencies between 2 and 3 megacycles. In areas where there are concentrations of these boats, the misuse of the distress frequency has prevented the transmission of emergency messages to the Coast Guard. Normal enforcement methods such as issuances of rule violation notices and suspension of operator licenses have only been partially successful. During the first quarter of the fiscal year 1961, a total of 1,068 small boat radio stations were inspected. There were 394 violation notices issued as the result of noncompliance with the Commission's

regulations. In addition, 101, or 10 percent, were found to be operating without authority from the Commission. Since inspection of 1,068 vessels is a very limited sampling of 93,561 boats licensed by the Commission, it is evident that disregard for the Commission's regulations is widespread. These statistics emphasized the inadequacy of the Commission's available enforcement tools in coping with this situation.

One result of the extensive increase in licensed stations in recent years has been a marked increase in the number of violations of the Commission's technical rules and regulations. This is particularly true in some of the newer private services where radio is not the principal activity of the licensee but is utilized as an adjunct to his primary business activities, and the station operators are accordingly less concerned with the necessity for adhering to the technical rules governing the use of radio. Most of the offenses are, taken individually, of a comparatively minor nature. Collectively, however, because of their number and variety, they represent a very real menace to the orderly use of the radio spectrum and to efficient regulation by the Commission. In addition, these violations result in a serious menace to life and property in those services, such as maritime and aviation, where radio serves as a vital and necessary safety device.

The Commission has found that its existing sanctions are inadequate to handle the situation which confronts it. These existing sanctions, such as criminal penalties, revocation of licenses, and issuance of cease and desist orders, are normally too drastic for the relatively minor types of offenses involved, and too cumbersome and time consuming considering the multitude of violations that occur. In aggravated cases, these more drastic sanctions are, of course, available for use. However, the Commission is reluctant in any event to take action which will result in depriving a licensee of radio when it is being used for safety purposes, such as on an aircraft or a ship.

Congress has recognized the need for this type of forfeiture authority and has given it to various Government agencies. Thus, Congress has made a broad provision for civil penalties for violations of the Civil Aeronautics Act and certain regulations issued under that act (49 U.S.C. 62). And see also 8 U.S.C. 1321 et seq. (aliens and nationality); 46 U.S.C. 526 (o) and (p) (motorboats); 49 U.S.C. 181(b) (aircraft); 49 U.S.C. 322(h) (motor carriers); and 49 U.S.C. 621 (inland waterways and air carriers). Moreover, Congress has already given such authority to the Federal Communications Commission, with respect to common carriers under title II of the Communications Act of 1934, as amended, as to those ships which are required to carry radio equipment pursuant to the provisions of part II and part III of title III of that act, and also as to broadcast station licenses (47 U.S.C. 351-364, 381-386; 74 Stat. 893-895).

The proposal provides that forfeiture liability shall attach only for a willful, negligent, or repeated violation of the provisions enumerated in the new section 510 to be added to the Communications Act. It further fixes a maximum forfeiture liability of \$100 for the violation of the provisions of any one paragraph of the proposed section 510 and an overall maximum liability of \$500 for all violations of such section occurring within 90 days prior to the date a notice of apparent liability is sent. The Commission is required to give a notice of apparent liability to such person or send it to him by registered mail and to set forth therein facts which indicate apparent liability. The person so notified of apparent liability is given the right to show cause, in writing, why he should not be held liable and to request a personal interview with an official of the Commission at the field office of the Commission nearest to that person's place of residence.

Procedural safeguards are available to a person charged with forfeiture liability. Not only has he the right under section 5(d) of the Communications Act (47 U.S.C. 155(d)) to request a review of Commission action taken, but by the extension to the new proposal of the remission and mitigation provisions of section 504(b) of the Communications Act (47 U.S.C. 504(b)) he is afforded a further opportunity to show cause why he should not be held liable. Should such person refuse to pay the amount of a forfeiture as finally determined, he could, by such refusal, cause the United States, if it so elects, to institute a civil suit against him, as provided in section 504(a) of the Communications Act (47 U.S.C. 504(a)), thereby further contesting the validity of the asserted forfeiture liability. Thus, adequate safeguards would be available for the protection of the legal rights of a person against whom a forfeiture liability is asserted.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, May 2, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate.*

DEAR MR. CHAIRMAN: Your letter of April 20, 1961, acknowledged April 21, transmitted copies of S. 1668 entitled "A bill to authorize the imposition of forfeitures for certain violations of the rules and regulations of the Federal Communications Commission in the common carrier and safety and special fields," and requested our comments thereon.

Other than the explanation which was made a part of the record at the time S. 1668 was introduced, we have no information as to the necessity for or desirability of imposing forfeitures as proposed by the bill, and since the bill would not affect the functions of our Office, we have no comments with respect to its merits or recommendations regarding its enactment.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

TITLE V—PENAL PROVISIONS—FORFEITURES

GENERAL PENALTY

SEC. 501. * * *

SEC. 502. * * *

FORFEITURE IN CASES OF REBATES AND OFFSETS

SEC. 503. * * *

PROVISIONS RELATING TO FORFEITURES

SEC. 504. (a) * * *

(b) The forfeitures imposed by parts II and III of title III and [sections 503(b) and 507] *section 503(b), section 507, and section 510* of this Act shall be subject to remission or mitigation by the Commission, upon application therefor, under such regulations and methods of ascertaining the facts as may seem to it advisable, and, if suit has been instituted, the Attorney General, upon request of the Commission, shall direct the discontinuance of any prosecution to recover such forfeitures: *Provided, however,* That no forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

VENUE OF OFFENSES

SEC. 505. * * *

COERCIVE PRACTICES AFFECTING BROADCASTING

SEC. 506. (a) * * *

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(b) * * *

(1) * * *

(2) * * *

(3) * * *

(c) * * *

(d) * * *

(e) * * *

VIOLATION OF GREAT LAKES AGREEMENT

SEC. 507. (a) * * *

(b) * * *

FORFEITURE IN CASES OF VIOLATIONS OF CERTAIN RULES AND
REGULATIONS

SEC. 510. (a) Where any radio station, other than licensed radio stations in the broadcast service or stations governed by the provisions of parts II and III of title III and section 507 of this Act—

(1) is operated by any person not holding a valid radio operator license or permit of the class prescribed in the rules and regulations of the Commission for the operation of such station;

(2) is operated without identifying the station at the times and in the manner prescribed in the rules and regulations of the Commission;

(3) transmits any false call contrary to regulations of the Commission;

(4) is operated on a frequency not authorized by the Commission for use by such station;

(5) transmits unauthorized communications on any frequency designated as a distress or calling frequency in the rules and regulations of the Commission;

(6) interferes with any distress call or distress communication contrary to the regulations of the Commission;

(7) fails to attenuate spurious emissions to the extent required by the rules and regulations of the Commission;

(8) is operated with power in excess of that authorized by the Commission;

(9) renders a communication service not authorized by the Commission for the particular station;

(10) is operated with a type of emission not authorized by the Commission;

(11) is operated with transmitting equipment other than that authorized by the Commission; or

(12) willfully or repeatedly fails to respond to official communications from the Commission;

the persons or persons operating such station and the licensee of the station shall, in addition to any other penalty prescribed by law, each forfeit to the United States the sum of \$100. The violation of the provisions of each paragraph of this subsection shall constitute a separate offense: Provided, That \$100 shall be the maximum amount of forfeiture liability for which any person shall be liable under this section for the violation of the provisions of any one paragraph of this subsection, irrespective of the number of violations thereof, occurring within ninety days prior to the date the notice of apparent liability is issued or sent as provided in subsection (c) of this section: And provided further, That \$500 shall be the maximum amount of forfeiture liability for which any such person shall be liable under this section for all violations of the provisions of this section, irrespective of the total number thereof, occurring within ninety days prior the date said notice of apparent liability is issued or sent as provided in subsection (c) of this section.

(b) The forfeiture liability provided for in this section shall attach only for a willful, or negligent, or repeated violation by any such person of the provisions of this section.

(c) *No forfeiture liability under this section shall attach after the lapse of ninety days from the date of the violation unless within such time a written notice of apparent liability, setting forth the facts which indicate apparent liability, shall have been issued by the Commission and received by such person, or the Commission has sent him such notice by registered mail or by certified mail at his last known address. The person so notified of apparent liability shall have the opportunity to show cause in writing why he should not be held liable and, upon his request, he shall be afforded also an opportunity for a personal interview with an official of the Commission at the field office of the Commission nearest to the person's place of residence.*

